

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF AND
APPENDIX**

77-4029

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
CHEUN TAI CHENG,

Petitioner,

-against-

No. 77-4029

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.
-----X

PETITIONER'S BRIEF

✕
JOINT APPENDIX

THOMAS SUNG
ATTORNEY AT LAW
217 PARK ROW

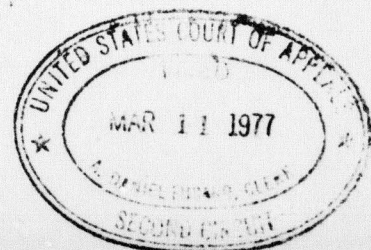


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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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CHEUN TAI CHENG,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

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No. 77-4029

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PETITIONER'S BRIEF

PRELIMINARY STATEMENT

Pursuant to Section 106 of the Immigration and Nationality Act, 8 U.S.C. 1105, the petitioner seeks a judicial review of the final order of the Board of Immigration Appeals directing that he be deported to the Republic of China on Taiwan as his country of citizenship or nationality rather than the People's Republic of China as claimed by him.

STATUTE INVOLVED

Section 243(a) of the Immigration and Nationality Act, 8 U.S.C. 1253(a) provides as follows:

The deportation of an alien in the United States provided for in this Act, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designed by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States.

No alien shall be permitted to make more than one such designation, nor shall any alien designate, as the place to which he wishes to be deported, any foreign territory contiguous to the United States or any island adjacent to the United States unless such alien is a native, citizen, subject, or national of, or had a residence in such designated foreign contiguous territory or adjacent island. If the government of the country designated by the alien fails finally to advise the Attorney General within three months following original inquiry whether that government will or will not accept such alien into its territory, such designation may thereafter be disregarded. Thereupon deportation of such alien shall be directed to any country of which such alien is a subject national, or citizen if such country is willing to accept him into its territory. If the government of such country fails finally to advise the Attorney General

or the alien within three months following the date of original inquiry, or within such other period as the Attorney General shall deem reasonable under the circumstances in a particular case, whether that government will or will not accept such alien into its territory, then such deportation shall be directed by the Attorney General within his discretion and without necessarily giving any priority or preference because of their order as herein set forth either--

(1) to the country from which such alien last entered the United States;

(2) to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory;

(3) to the country in which he was born;

(4) to the country in which the place of his birth is situated at the time he is ordered deported;

(5) to any country in which he resided prior to entering the country from which he entered the United States;

(6) to the country which had sovereignty over the birthplace of the alien at the time of his birth; or

(7) if deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.
(Emphasised supplied)

STATEMENT OF FACTS

The petitioner is an overstayed Chinese crewman entered the United States from Hong Kong. On June 14, 1976, a deportation hearing was accorded him under the Law. He conceded deportability as charged in the Order to Show Cause, except as to his country of nationality or citizenship. The Order to Show Cause alleged that he is a native of China and a citizen of the Republic of China on Taiwan. The petitioner objected to the second part of that allegation and asserted that he was a citizen of the People's Republic of China. A motion to amend the said allegation was made at the hearing, but it was denied by the Immigration Judge.

The petitioner designated Singapore as the country of his choice for deportation. A deportation order was entered at the conclusion of the hearing which provided in pertinent part that petitioner shall first be deported to Singapore. If Singapore is unwilling to accept the petitioner or fails to notify the Attorney General whether it will or will not accept the petitioner within three months following the original inquiry, the petitioner shall be deported to the Republic of China on Taiwan. If Taiwan is

unwilling to accept the petitioner or fails to advise the Attorney General whether it will or will not accept the petitioner within three months following the original inquiry, the petitioner shall be deported to Hong Kong.

The petitioner appealed the decision of the Immigration Judge to the Board of Immigration appeals contending that the order should provide for his deportation to the People's Republic of China rather than the Republic of China on Taiwan as the country of his citizenship and nationality.

The record indicated that he had no family ties in Taiwan, nor did he bear any travel document issued by that government. On the other hand, he was born and raised on the Mainland of China and has his family ties there. The Board on September 14, 1976, affirmed the decision of the Immigration Judge. This petition for review followed.

ARGUMENTS

POINT I

SECTION 243(a) OF THE ACT OUTLINES THREE PRIORITIES WHICH THE ATTORNEY GENERAL IS REQUIRED TO FOLLOW IN DEPORTING AN ALIEN.

All of the leading cases on the subject recognize the explicit provisions of Section 243(a) of the Act which provide for three distinct steps in effectuating the deportation of an alien.

Ng Kam Fook V. Esperdy 320 F.2d 86 (1963):

"The question involved in this appeal is the construction of the word "country" as used in Section 243 (a) of the Immigration and Nationality Act of 1952 (the Act), (8 U.S.C. 1253(a)), which sets forth a pattern for deportation of aliens illegally present in the United States. In providing for the mechanics for the enforcement of a deportation order, the section prescribes in succession three priorities for the deportation of an alien, in each of which the word "country" is employed; (1) deportation to a country designated by the alien if the country is willing to accept him; (2) upon failure to receive timely acceptance from the country mentioned in (1), deportation to "any country of which such alien is a subject, national,

or citizen if such country is willing to accept him into its territory"; and (3) upon failure to receive timely acceptance from the country mentioned in (2), deportation to any one of seven categories of countries mentioned in the Act within the discretion of the Attorney General without priority as to order."

Similiar references to the three priorities for deportation are found in all other related cases. See Lee Wei Fang V. Kennedy, 317 F. 2d 180; Rogers V. Cheng Fu Sheng, 280 F. 2d 663; Leong Choy Moon V. Shaughnessy, 218 F. 2d 315; Chan Chuen V. Esperdy, 285 F. 2d 353; U.S. ex rel Tom Man V. Murff, 264 F. 2d 926; Lee Wei Fang V. Kennedy, 317 F. 2d 180; Pun Hoi Cheng V. Immigration and Naturalization Service 521 F. 2d 1351.

POINT II

THE PETITIONER'S COUNTRY OF CITIZENSHIP OR NATIONALITY IS THE PEOPLE'S REPUBLIC OF CHINA.

The word "country" as used in Section 243(a) of the Act has been contrued to have different meanings depending upon the context in which it is used. When it is used in connection with the first and the third

priorities for deportation, it has been given the broadest interpretation. It can refer to any place possessing a government with authority to accept an alien deported from the United States. There, the word refers to a geographical area or territory. Chan Chuen V. Esperdy, 285 F. 2d 353 (2 Cir. 1960); Leong Choy Moon V. Shaughnessy, 218 F. 2d 316 (2 Cir. 1954); Hom Sin V. Esperdy 209 F. Supp. 3 (SDNY 1962); U.S. Ex rel Wong Kam Wong V. Esperdy 197 F. Supp. 914 (SDNY 1961).

When the word "Country" is used in connection with citizenship or nationality as in the second priority for deportation, a different concept arises. The courts have held that there it refers to a foreign government rather than a place or territory, See Ng Kam Fook V. Esperdy, Suppra.

The earlier cases have held (under circumstances distinguishable from the present case) that the Republic of China on Taiwan was the country of citizenship for the Chinese deportees in question, because the United States recognized the government of the Republic of China on Taiwan as the de jure Government of China and the Communist

Government on the Mainland was no more than a de facto government. However, a careful analysis of all of these cases will reveal that the very basis for determining these earlier deportees to be citizens of Republic of China on Taiwan will now also find the petitioner to be the citizen of the People's Republic of China.

The basic definition for the word "country" under the second priority herein question is supplied by *Burnet V. Chicago Portrait Co.* 285 U.S. 1, 51 52 S. Ct. 275, 277 (1932).

"When referring more particularly to a foreign government, it may describe a foreign State in the international sense, that is, one that has the status of an international person with the rights and responsibilities under international law of a member of the family of nations."

In *Ng Kam Fook V. Esperdy*, *Supra*, this court adopted the above definition and stated:

"In connection with naturalization and citizenship the dominant consideration is not geographical and in such case it is not unreasonable to construe the word "country" as meaning a foreign state with the rights and responsibilities under international law of a member of the family of nations."

The elements constituting a foreign state can be further analyzed as follows:

a) The rights and responsibilities under international law of a member of the family of nations.

In the 1950's and 1960's, the People's Republic of China was not admitted as a member of the United Nations. Today it is not only a member nation, but also a permanent member of its important Security Council. The Republic of China, on the other hand, has been expelled from the United Nation membership.

b) Diplomatic contacts with the United States.

In the earlier period, the United States maintained no diplomatic contacts with the People's Republic of China. Today, reciprocal diplomatic missions have been established in the capitals of both countries. Our presidents have openly and notoriously visited the heads of that government and issued a Joint Communique in February, 1972 regarding the status of China.

c) Trading between the two nations.

Trade missions from each nation have exchanged visits with each other and restrictions on trade to China have been lifted by the United States.

d) Permanency of the Government of the People's Republic of China.

The United States is no longer at a state of hostility with the People's Republic of China and seeking for its overthrow as in the 1950's and early 1960's. The United States now in fact does not regard that government as being temporary. Although there is no formal pronouncement of recognition, there is a de facto recognition that that government controlling China is de jure and permanent. One only needs to examine the practice of Immigration and Naturalization Service itself regarding the submission of probative evidence for visa petition to be convinced of this fact.¹

e) Validity of travel documents.

Another crucial element of a de jure government is the validity of its travel documents to the other nations. Today, visas and passport issued by the People's Republic of China are recognized by the United States and 100 other nations. Visas for travel to China may actually be obtained in the United States.

¹See appendix, ^{A/B}a letter from Immigration and Naturalization Service to a visa petitioner regarding the procurement of probative evidence from the People's Republic of China.

f) Alien's own preference as to citizenship.

In the earlier cases, the courts have recognized that the alien's own preference is a determining factor as to the country of citizenship. In *Ng Kam Fook V. Esperdy*, *Suppra*, and *Lee Wei Fang V. Kennedy*, *Suppra*, the courts in deciding that the deportees were citizens of the Republic of China on Taiwan referred to the lack of evidence in the records to indicate that the deportees themselves in fact gave allegiance to the People's Republic of China. Rather, the contrary was true. In the instant case, the record clearly indicates that the People's Republic of China was the petitioner's preference.

POINT III

COMPLIANCE WITH SECTION 243(a) OF THE
ACT IS REQUIRED UNDER DUE PROCESS OF LAW.

The legal necessity of the Attorney General to comply with the procedural aspect of Section 243(a) of the Act is best expressed in the dissenting opinion of Circuit Judge Wright in *Lee Wei Fang V. Kennedy*, 317 F. 2d 180 (D.C. Circuit 1963):

"It is clear that aliens are entitled to due process of law which, in deportation proceedings, means a hearing with findings supported by evidence in the record. This requirement applies to the determination of the country to which an alien shall be deported under Section 243 of the Act. There is little evidence in these records beyond appellants' admissions that they were born on the Mainland of China and that they are citizens of "China." These admissions are the basis for the Special Inquiry Officer's finding that they are natives and citizens of "China." But there is no proof as to the "China" the appellants or the Special Inquiry Officer had in mind. Moreover, there is in the record no evidence whatever as to the municipal law of Nationalist China. Consequently, we are uninformed as to whether, under the law of that country, these aliens, in particular, are subject nationals or citizens thereof, or whether, in general, Nationalist China claims as subject nationals or citizens all persons born on the Mainland. Under these circumstances, it appears to me that the conclusion that these appellants are subject nationals or citizens of Nationalist China is not only without support in the record, but is likewise without support in the findings themselves.... Congress, in passing Section 243(a) of the Act, obviously intended to simplify the problem of deporting aliens, but it did not give the Executive an unrestricted hand. Under Section 243(a), since appellants indicated no preference under the first priority, in order to deport them it became necessary to determine their citizenship or nationality under the second. This has not been done, at least not in accordance with applicable standards of due process. The fact that these Chinese may be able to make a valid application under Section 243(h) to withhold deportation because of physical persecution cannot justify short-

circuiting the second priority under Section 243(a). Nor, in my judgment, can their effort to assert whatever rights they may have under the Immigration and Nationality Act of 1952 preclude consideration of their application to a court of equity for enforcement of due process of law."

In the instant case there is no doubt that the petitioner claimed that he is a citizen or national of the People's Republic of China. An appropriate objection was raised at the hearing concerning the allegation that he is a citizen or national of the Republic of China on Taiwan. The record reflects this fact.

POINT IV

FINDING THAT THE PETITIONER'S COUNTRY OF NATIONALITY OR CITIZENSHIP TO BE THE PEOPLE'S REPUBLIC OF CHINA WILL NOT FRUSTRATE THE INTENT OF THE CONGRESS TO REDUCE THE NUMBER OF DEPORTABLE ALIENS.

In the 1950's and 1960's, the primary concern of the courts in construing the country of citizenship or nationality for Chinese under the second priority to mean the Republic of China on Taiwan rather than the People's Republic of China was summarized in the opinion of the Circuit Judge Washington in the Lee Wei Fang v. Kennedy, Supra, :

"These cases stand for the principle that nationality and citizenship for purposes of Section 243(a) are not determined exclusively by the geographical spot where one was born, but that political matters must be considered. In the case of citizens of China, for purposes of deportation from the United States, they are properly regarded as citizens of the government of their country which the United States recognizes, at least in the absence of a showing that they in fact support and give allegiance to the government not recognized by the United States. Since effectuation of deportation to the country of which the alien is a national depends, under the statute, on securing the prior consent of that government, the statute would be deprived of effectiveness, where there are two "governments," if the Attorney General were required to secure the consent of the government not recognized by the United States. Not only are the customary diplomatic channels not available for this purpose, and the required consent virtually unobtainable, but the Attorney General would be obliged to subvert in a substantial sense the established foreign policy of the United States. And the result would be that the purpose of Congress to reduce the number of undeportables, see *Rogers V. Cheng Fu Sheng*, supra, would also be obstructed."

Assuming that the petitioner were properly found to be a citizen of the People's Republic of China, the Attorney General can now encounter no difficulty in effecting the deportation of the petitioner or aliens similiarly situated. The United States and the People's Republic of China now maintain reciprocal diplomatic missions in the capitals of each other. Customary dipolmatic channels are available to secure the consent or denial for deportation of aliens. Both nations now frequently contacts each other on matters affecting their interest. Therefore, contacting China for deportation of an alien can now cause no embarrassment to the United States in foreign affairs nor subversion of the established foreign policy of the United States.

POINT V

THE LEADING CASES CONSTRUING THE COUNTRY
OF NATIONALITY OR CITIZENSHIP FOR CHINESE
ARE CLEARLY DISTINGUISHABLE FROM THE
INSTANT CASE.

- a) Ng Kam Fook V. Esperdy, 320 F. 2d 86
(2nd Circuit, 1963):

In the cases of Ng Kam Fook, the Chinese aliens were found to be the subjects, citizens and nationals of the Republic of China on Taiwan under Section 243(a) of the Act. This court stated then as follows:

"In the present proceeding another factor is also important. Assuming, arguendo, that the Chinese mainland could be a "country", as that term is used in the second priority of the Act, the appellants have presented no evidence that actually they are subject nationals or citizens of the Communist Government on the mainland. The record is devoid of any evidence whatsoever of their allegiance to this Government which now controls the area. As above stated, Fook and Tong were both born on the mainland of China at the time it was controlled by the Nationalist Government. According to the record, Fook stated that he was an adherent of the Nationalist Government at the time he left and in fact, was travelling on a passport issued by that Government. Tong stated on the record

that he did not wish to be sent to a Communist country, which automatically included the Communist Government on the mainland. As observed by Judge Parker in *Delany v. Meraitis*, supra, "a man's 'country' is more than the territory in which its people live. The term is used generally to indicate the state, the organization or social life which exercises sovereign power in behalf of the people." (id. 136 F.2d at 130). As used in the Act, "the term 'national' means a person owing permanent allegiance to a state." Clearly, the allegiance of these appellants was not to the Chinese Government on the mainland. Their original allegiance was unquestionably to the Nationalist Government now on Formosa, and the record discloses no evidence of any change in this allegiance. Their "original citizenship is, therefore, to be presumed to have continued". *Hauenstein v. Lynham*, 100 U.S. 483, 25 L.Ed. 628 (1880). The bare allegations of these aliens to the contrary, in the absence of any proof or showing, lack sincerity and are insufficient to cast a substantial doubt upon their actual allegiance to or citizenship of the Nationalist Government on Formosa. It is unnecessary, therefore, to predicate our conclusion solely upon the construction of the word "country", as used in the statute, dictated primarily upon the non-recognition of the Communist Government which in turn is based upon the theory that a preliminary inquiry might impliedly suggest recognition and thus might embarrass the decisions of the Executive Department as to foreign policies. See *Cardozo, Judicial Deference to State Department Suggestions: Recognition of Prerogative or Abdication to Usurper?*, 48 Cornell L. Q. 461 (1963)."

In the instant case, the petitioner clearly asserted at the initial deportation hearing that he is a citizen of the People's Republic of China. He did not bear any travel document issued by the Republic of China on Taiwan; nor had he ever lived there or had any family ties there.

The Immigration and Naturalization Service should be able to confirm that the Republic of China on Formosa does not accept deportees under petitioner's circumstances. Indeed, the Republic of China did refuse to accept the petitioner as the record indicates. Apparently, the Republic of China on Formosa also did not regard the petitioner as a citizen of that country, at least under our concept of citizenship.

b) Lee Wei Fang v. Kennedy, 317 F. 2d 180
(D.C. Circuit 1963):

In the case of Lee Wei Fang, the Republic of China on Taiwan was contrued as the country of nationality or citizenship for the Chinese aliens. The court stated:

"The Attorney General's action in treating the Nationalist Government of China on Formosa as the government and suggested that any of the thirty-four were in fact subject nationals or citizens of Communist China or that any wished to claim such citizenship. The Attorney General, on

this record, was fully justified in treating the appellants as subject nationals or citizens of the Republic of China. And the District Court could not have reached any other conclusion. The bare allegation by the appellants in their complaints that they are citizens of Communist China is totally unsupported by the record facts, indeed it is negated by the record."

Again the record of the instant case is clear that the People's Republic of China was asserted in the beginning to be the petitioner's country of citizenship or nationality.

- c) Cheng Pun Hoi V. I&NS, 521 F. 2d 1351, (3rd Circuit 1975, certiorari denied, Jan. 12, 1976):

The respondent will no doubt rest its case heavily upon Cheng Pun Hoi. In the cited case, the alien, at the original deportation hearing in 1972, conceded that he was a citizen of the Republic of China on Taiwan. He also applied for political asylum from deportation to the People's Republic of China. The alien being faced with deportation to Hong Kong moved to reopen the deportation proceedings to change his citizenship to the People's Republic of China. The Board of Immigration Appeals denied the motion and stated that the alien was not prejudiced by

being order deported to Hong Kong under the third priority since he never sought to be deported to the People's Republic of China. In effect, the motion to reopen the deportation proceeding was merely a procedural maneuver to delay deportation and the result regarding the country of deportation if the motion were granted would be the same. The Third Circuit Court of Appeals affirmed the Board's decision.

In the instant case, the petitioner never conceded that he was a citizen of the Republic of China on Formosa at the original hearing. In fact he objected to that allegation and asserted that he was a citizen of the People's Republic of China.

There is also no maneuver for procedural delay. This appeal is from the original order of deportation. Nor has the petitioner applied for political asylum from deportation to the People's Republic of China. Even if he intended to apply for such a relief if the People's Republic of China were properly designated, no undue delay from deportation would ensue since the issue would be disposed of at the original hearing.

CONCLUSION

Under the facts of this case and in the light of the present international developments, the petitioner should be regarded as the citizen and national of the People's Republic of China for the purpose of deportation. The decision of the Board of Immigration Appeals should be reversed and the case remanded for an appropriate order.

Respectfully submitted,

THOMAS SUNG
Attorney for Petitioner
217 Park Row
New York, NY 10038



United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A21 388 252 - New York

SEP 14 1976

In re: CHEUN TAI CHENG

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:

Thomas Sung, Esquire
217 Park Row
New York, New York 10038

CHARGE:

ORDER: Section 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - Entered without inspection

APPLICATION: None

This is an appeal from an order of an immigration judge finding the respondent deportable and granting him voluntary departure. The appeal will be dismissed.

The record relates to a male alien, native of China and a citizen of the Republic of China, who entered the United States in 1970 without undergoing inspection by the Immigration Service. The respondent admitted that he entered the United States without inspection (Tr. 2). Our review of the record satisfies us that deportability has been established by clear, convincing and unequivocal evidence, and that the immigration judge properly applied the pertinent legal principles.

On appeal counsel argues that the country to which the respondent was ordered to be deported was erroneous, because the respondent is no longer a citizen of the Republic on Taiwan. There is no merit to this argument. The respondent waived his rights under section 243(h) of the Immigration and Nationality Act (Tr. 4), and designated Singapore as the place

he preferred to be deported and alternatively, the immigration judge designated Republic of China on Taiwan. 1/ On motion of the Service, Hong Kong was added as a third designation, if the Republic of China on Taiwan refused to accept the respondent. We agree with the immigration judge that respondent's birth on mainland China does not bar the immigration judge from designating alternative places of deportation, Matter of S-Y-L, 9 I&N Dec. 575, (BIA 1962). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

1/ Section 243(a) of the Act specifically provides deportation of an alien to a country. . . designated by him. Here the respondent designated Singapore. (Tr. 3).

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

Fee Stamp

NYC 68366T

In the Matter of:

File No. A21 388 252

CHENG Cheun Tai

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated June 14, 1976, in the above entitled case.
2. Briefly, state reasons for this appeal.

The Immigration Judge wrongfully denied the respondent's motion to amend the Order to Show Cause to indicate that the respondent is a citizen of China rather than the Republic of China on Taiwan. In light of today's new international development, the respondent could no longer be said to be a citizen of the Republic of China on Taiwan. The record will indicate that he has never been in Taiwan, nor has he family ties there. He bears no travel document issued by Taiwan. The incorrect allegation in the Order to Show Cause resulted in the erroneous order of the Immigration Judge in designating the country for deportation pursuant to Sec. 243 of the Act.

3. I do not desire oral argument before the Board of Immigration Appeals in Washington, D. C.
(do) (do not)
4. I am not filing a separate written brief or statement.
(am) (am not)

Signature of Appellant (or attorney or representative)

Thomas Sung

(Print or type name)

6/22/76

Date

217 Park Row, New York, NY 10038

Address (Number, Street, City, State, Zip Code)

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Form I-290A
(Rev. 2-15-71)N

UNITED STATES OF AMERICA:

File No. A 21 388 252

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

Cheng, Cheun Tai

Respondent.

In Deportation Proceedings Under Section 242
of the Immigration and Nationality Act

DECISION OF THE
IMMIGRATION JUDGE

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation, respondent be granted voluntary departure without expense to the Government on or before July 17, 1976
(Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Singapore on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to Republic of China on Taiwan

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to HONG KONG

Copy of this decision has been served on respondent.

Appeal: ~~Waived~~ reserved

Date: 6/14/76

Place: NY, NY

Julius Schongel
(Immigration Judge)

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

MATTER OF
CHENG, CHEUN TAI

FILE A21 388 252 - NEW YORK

IN DEPORTATION PROCEEDINGS

TRANSCRIPT OF HEARING

Before: ALEXANDER SCHONFELD, Immigration Judge

Date: June 14, 1976 Place: 20 WEST BROADWAY

Transcribed by MARTHA PASTOR Recorded by GRAY

Official Interpreter Mr. Zseto

Language Chinese

APPEARANCES:

For the Service:

John K. Speer, Esq.
Trial Attorney

New York, N.Y. 10007
Station

For the Respondent:

Thomas Sung, Esq.

217 Park Row

New York, N.Y. 10038

1 IMMIGRATION JUDGE TO RESPONDENT (THROUGH OFFICIAL INTERPRETER):

2 Q. Sir, will you stand and raise your right hand. Do you solemnly
3 swear the statements that you make here today will be the truth,
4 the whole truth, and nothing but the truth, so help you God?

5 A. I do.

6 Q. What is your name, sir?

7 A. Cheng Cheun Tai.

8 Q. Do you speak and understand the Chinese language as spoken by Mr.
9 Szeto?

10 A. Yes.

11 Q. And is Mr. Sung, the gentleman at your left is he your attorney
12 in this case?

13 A. Yes.

14 IMMIGRATION JUDGE TO COUNSEL:

15 Q. Mr. Sung, on behalf of the respondent do you acknowledge receipt
16 of the Order to Show Cause?

17 A. Yes, I do your honor.

18 Q. Do you have any objection to the Order to Show Cause being marked
19 as Exhibit #1 in this matter?

20 A. No.

21 Q. On behalf of the respondent do you waive the reading of the alle-
22 gations, admit the truth of the allegations in the Order to Show
23 Cause?

24 A. Yes except for allegation #2, your honor.

25 Q. What part of allegation #2 are you contesting?

26 A. The second part, citizen of *the Republic of* China on Taiwan.

1 Q. I see, and you acknowledge the truth of item # 1, 3 and 4, is that
2 correct?
3 A. 1, 3 and 4, yea your honor.
4 IMMIGRATION JUDGE:
5 All right, now Mr. Speer, do you want to question the respondent
6 with respect to item #2?
7 MR. SPEER:
8 Yes.
9 MR. SPEER TO RESPONDENT:
10 Q. Mr. Cheng, where were you born?
11 A. Foo Chow ... (phonetic)
12 Q. Have you ever had a passport of any kind?
13 A. I have never had a passport except a Seaman's book.
14 Q. What authority issued that Seaman's book?
15 A. ... in Hong Kong.
16 Q. The Government quotes Matter of S-y-1 9 I & N Decision, 575 (B.I.A.
17 1962) states that a respondent may be a native of Mainland China
18 does not prevent his deportation to the Republic of China on Taiwan.
19 MR. SUNG:
20 Will you repeat the citation again?
21 MR. SPEER:
22 Yes, Matter of S-y-1 9 I & N Decision, 575 (B.I.A. 1962)
23 MR. SUNG:
24 What volume is that?
25 IMMIGRATION JUDGE:
26 Lets go off the record a moment.

1 IMMIGRATION JUDGE TO COUNSEL:

2 Q. Are you moving to amend allegation 2 or...

3 A. Yes, your honor.

4 Q. To read what?

5 A. To read China.

6 Q. As to what, citizenship?

7 A. Yes.

8 IMMIGRATION JUDGE:

9 I see, all right, based on the Matter of S-y-1, 9 I & N 575, I am
10 denying your motion to amend that part of item 2 referring to the
11 respondent's citizenship. Now, do you concede on behalf of the re-
12 spondent that he is deportable from the United States, Mr. Sung?

13 MR. SUNG:

14 Yes, I do.

15 Q. What is your application?

16 A. Voluntary departure, your honor, 30 days.

17 Q. And in the event that deportation becomes necessary, Mr. Sung are
18 you prepared to designate a place for deportation on behalf of the
19 respondent or do you prefer that I ask him?

20 A. No, the respondent has requested that I ask the Government if he
21 can designate Singapore ...

22 IMMIGRATION JUDGE TO RESPONDENT:

23 Q. Mr. Cheng, your attorney has indicated that in the event that de-
24 portation became necessary in your case that you select Singapore
25 as the place to which you wish to be deported, is that correct?

26 A. Yes.

1 IMMIGRATION JUDGE:

2 I'll direct it in the event deportation becomes necessary, the re-
3 spondent be deported to Singapore, and I'll further direct that in
4 the event Singapore refuses to accept the deportee he be deported
5 to the Republic of China on Taiwan.

6 Q. Does the Service have any additional request for designations?

7 MR. SPEER:

8 Hong Kong.

9 IMMIGRATION JUDGE:

10 I understand from previous testimony that the gentleman entered on
11 a Hong Kong Identity Book or had in his possession such a book, is
12 that correct?

13 MR. SUNG:

14 The file so indicates, yes.

15 IMMIGRATION JUDGE TO RESPONDENT:

16 Q. Did you ever live in Hong Kong, Mr. Cheng?

17 A. Yes.

18 IMMIGRATION JUDGE:

19 All right, I'll grant the Service's motion and as a third desig-
20 nation I'll designate Hong Kong.

21 Q. Mr. Cheng, are you making any claims of 243(h) to any of these
22 places that were designated?

23 MR. SUNG:

24 No, your honor.

25 Q. No claims to 243(h)?

26 A. No.

1 IMMIGRATION JUDGE:

2 Q. Then you are waiving that in behalf of the respondent?

3 A. Yes.

4 Q. Now, I'll permit the respondent to leave the United States in ac-
5 cordance with the agreement between the Trial Attorney and yourself
6 on or before July 14, 1976. Do you accept my decision, that is, in
7 the event he does not leave on or before that date he shall be de-
8 ported to Singapore, and if Singapore does not accept him, then to
9 the Republic of China on Taiwan, and if the Republic of China on
10 Taiwan does not accept him, to Hong Kong. Do you accept my deci-
11 sion as a final order, Mr. Sung?

12 MR. SUNG:

13 Your honor, I reserve my right to appeal.

14 IMMIGRATION JUDGE:

15 And the Service?

16 MR. SPEER:

17 The Government accepts it as a final order.

18 IMMIGRATION JUDGE TO COUNSEL:

19 Mr. Sung, what portion of my order are you appealing?

20 MR. SUNG:

21 Your honor, I am only reserving. I possibly may appeal the motion
22 denying...

23 IMMIGRATION JUDGE:

24 I am sorry I didn't understand what you said, you are appealing
25 which part of my decision?

26 MR. SUNG:

I'm appealing the motion, allegation...

1 IMMIGRATION JUDGE:

2 # 2 as to his citizenship?

3 MR. SUNG:

4 Yes.

5 IMMIGRATION JUDGE:

6 Very well, nothing on voluntary departure?

7 MR. SUNG:

8 No, your honor.

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15 NOTE: There were portions unaudible and therefore were not included on the
16 transcript. *mp*

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I hereby certify that to the best of my belief the foregoing pages numbered 1 through 6 are a complete and accurate transcript of the above-described proceedings.

Matthias Rastorfer
Signature
Transcriber
2000

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

No.

ORDER TO SHOW CAUSE, NOTICE OF HEARING, AND WARRANT FOR ARREST OF ALIEN

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. **A21 388 252**

In the Matter of **CHENG, Cheun Tai**

Respondent.

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of China and a citizen of Republic of China on Taiwan;
3. You entered the United States at an unknown point on the Canadian border on 12/23/70 (date).

4. You were not inspected by the United States Immigration and Naturalization Service.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 136 Flushing Avenue, Brooklyn, N.Y.

on June 3, 1976 (S) at 1:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

WARRANT FOR ARREST OF ALIEN

By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I have commanded that you be taken into custody for proceedings thereafter in accordance with the applicable provisions of the immigration laws and regulations, and this order shall serve as a warrant to any Immigration Officer to take you into custody. The conditions for your detention or release are set on the reverse hereof.

Dated: **June 2, 1976**

William E. McManis

ASSISTANT DISTRICT DIRECTOR
FOR INVESTIGATIONS, N.Y., N.Y.
(City and State)

APPEAR WITH PASSPORT AND
IMMIGRATION DOCUMENTS

6/14/76
Exh 1

18

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

PO BOX 61630

HOUSTON, TX 77268

NAME AND ADDRESS OF APPLICANT/PETITIONER

KUM FONG LOUIE
5258 MADDEN LN.
HOUSTON, TEXAS

NAME OF BENEFICIARY

WONG, KANG K

DATE

1-27-77

FILE NO.

AFTER REVIEW IT HAS BEEN FOUND THAT YOUR APPLICATION/PETITION CANNOT BE ADJUDICATED WITHOUT ADDITIONAL DOCUMENTS AND/OR INFORMATION. PLEASE COMPLY WITH THE BELOW CHECKED ☒

* ATTACHMENT

Before favorable consideration can be given your petition, it will be necessary that you attempt to obtain evidence of your relationship to the beneficiary or beneficiaries of your petition(s) from the People's Republic of China. The People's Courts (notary offices) at the district or city levels in the People's Republic of China are prepared to issue documents attesting to such matters as birth, marriage, or family relationship. The signature of the local official must be authenticated by an official of the Consular Department of the Ministry of Foreign Affairs, and that official's signature is authenticated by an official of the U.S. Liason Office in Peking. These documents may be applied for by persons residing in China in behalf of friends or relatives residing elsewhere. Persons outside China may not write directly to the District Court. In cases where an applicant has no friend or relative whatever living in China, he may submit his request through the nearest Embassy of the People's Republic of China (or through the Liason Office of the People's Republic of China in Washington, D.C.) for forwarding to the appropriate notary office. The fee is Yuan 5 (approximately U.S. \$2.50).

R. W. Newton

a13

COPY RECEIVED
Robert B. J. J.
UNITED STATES ATTORNEY
3/11/77
Marian L. Bryant